

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

CHRISTOPHER CZECHOROWSKI,)	Case No.: 1:21-cv-01027-SAB (PC)
)	
Plaintiff,)	
)	ORDER DIRECTING CLERK OF COURT TO
v.)	RANDOMLY ASSIGN A DISTRICT JUDGE TO
)	THIS ACTION
T. NIEBLAS,)	
)	FINDINGS AND RECOMMENDATIONS
Defendant.)	RECOMMENDING DISMISSAL OF ACTION
)	
)	(ECF No. 9)
)	
)	

Plaintiff Christopher Czechorowski is proceeding *pro se* and *in forma pauperis* in this civil rights action pursuant to 42 U.S.C. § 1983.

On August 25, 2021, the Court screened Plaintiff's complaint, found that Plaintiff stated a cognizable excessive force claim against Defendant T. Nieblas, and granted Plaintiff leave to file an amended complaint or notify the Court of his intent to proceed only on the excessive force claim. (ECF No. 8.) Plaintiff failed to respond to the Court's order. Therefore, on October 5, 2021, the Court ordered Plaintiff to show cause within fourteen days why the action should not be dismissed. Plaintiff has failed to respond to the order to show cause and the time to do so has passed. In fact, on October 19, 2021, the order to show cause was returned by the United States Postal Service as undeliverable. Local Rule 182(f), if a *pro se* party fails to notify the court of a change of address,

1 “service of documents at the prior address [of record] of the ... party shall be fully effective.” Local
2 Rule 182(f).

3 **I.**

4 **DISCUSSION**

5 Local Rule 110 provides that “[f]ailure of counsel or of a party to comply with these Rules or
6 with any order of the Court may be grounds for imposition by the Court of any and all sanctions . . .
7 within the inherent power of the Court.” The Court has the inherent power to control its docket and
8 may, in the exercise of that power, impose sanctions where appropriate, including dismissal of the
9 action. Bautista v. Los Angeles County, 216 F.3d 837, 841 (9th Cir. 2000).

10 A court may dismiss an action based on a party’s failure to prosecute an action, failure to obey
11 a court order, or failure to comply with local rules. See, e.g. Ghazali v. Moran, 46 F.3d 52, 53-54 (9th
12 Cir. 1995) (dismissal for noncompliance with local rule); Ferdik v. Bonzelet, 963 F.2d 1258, 1260-61
13 (9th Cir. 1992) (dismissal for failure to comply with an order to file an amended complaint); Carey v.
14 King, 856 F.2d 1439, 1440-41 (9th Cir. 1988) (dismissal for failure to comply with local rule requiring
15 pro se plaintiffs to keep court apprised of address); Malone v. United States Postal Serv., 833 F.2d 128,
16 130 (9th Cir. 1987) (dismissal for failure to comply with court order); Henderson v. Duncan, 779 F.2d
17 1421, 1424 (9th Cir. 1986) (dismissal for lack of prosecution and failure to comply with local rules).

18 “In determining whether to dismiss an action for lack of prosecution, the district court is required
19 to consider several factors: ‘(1) the public’s interest in expeditious resolution of litigation; (2) the court’s
20 need to manage its docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring
21 disposition of cases on their merits; and (5) the availability of less drastic sanctions.’ ” Carey, 856 F.2d
22 at 1440 (quoting Henderson, 779 F.2d at 1423). These factors guide a court in deciding what to do, and
23 are not conditions that must be met in order for a court to take action. In re Phenylpropanolamine (PPA)
24 Products Liability Litigation, 460 F.3d 1217, 1226 (9th Cir. 2006) (citation omitted).

25 In this instance, the public’s interest in expeditious resolution of the litigation and the Court’s
26 need to manage its docket weigh in favor of dismissal. In re Phenylpropanolamine (PPA) Products
27 Liability Litigation, 460 F.3d at 1226. Plaintiff was ordered to either file an amended complaint or
28 notify the court of intent to proceed on the claim found to be cognizable within thirty days of August

25, 2021 and has not done so. Plaintiff's failure to comply with the order of the Court expressing his desire on how to proceed with this action hinders the Court's ability to move this action towards disposition. This action can proceed no further without Plaintiff's compliance with the order and his failure to comply indicates that Plaintiff does not intend to diligently litigate this action.

Since it appears that Plaintiff does not intend to litigate this action diligently there arises a rebuttable presumption of prejudice to the defendants in this action. In re Eisen, 31 F.3d 1447, 1452-53 (9th Cir. 1994). The risk of prejudice to the defendants also weighs in favor of dismissal. The public policy in favor of deciding cases on their merits is greatly outweighed by the factors in favor of dismissal. It is Plaintiff's responsibility to move this action forward. In order for this action to proceed, Plaintiff was required to make an election on how to proceed. Despite being ordered to do so, Plaintiff has failed to comply with the screening order or respond to the order to show cause and this action cannot simply remain idle on the Court's docket, unprosecuted. In this instance, the fourth factor does not outweigh Plaintiff's failure to comply with the Court's orders. Finally, a court's warning to a party that their failure to obey the court's order will result in dismissal satisfies the "consideration of alternatives" requirement. Ferdik, 963 F.2d at 1262; Malone, 833 F.2d at 132-33; Henderson, 779 F.2d at 1424. The Court's August 25, 2021 screening order expressly stated: "Plaintiff is warned that, if he fails to comply with this order, the Court will recommend to the District Judge that this action be dismissed for failure to prosecute and failure to obey a court order. (ECF No. 8.) In addition, the Court's October 5, 2021, order to show cause specifically stated: "Plaintiff's failure to comply with this order will result a recommendation to dismiss the action." (ECF No. 9.) Thus, Plaintiff had adequate warning that dismissal would result from his noncompliance with the Court's orders.

II.

ORDER AND RECOMMENDATION

Based on the foregoing, IT IS HEREBY ORDERED that the Clerk of Court shall randomly assign a District Judge to this action,

Further, it is HEREBY RECOMMENDED that this action be DISMISSED for Plaintiff's failure to comply with a court order and failure to prosecute.

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1 This Findings and Recommendation is submitted to the district judge assigned to this action,
2 pursuant to 28 U.S.C. § 636(b)(1)(B) and this Court's Local Rule 304. Within fourteen **(14) days** of
3 service of this Recommendation, Plaintiff may file written objections to this findings and
4 recommendation with the Court. Such a document should be captioned "Objections to Magistrate
5 Judge's Findings and Recommendation." The district judge will review the magistrate judge's
6 Findings and Recommendations pursuant to 28 U.S.C. § 636(b)(1)(C). The parties are advised that
7 failure to file objections within the specified time may result in the waiver of rights on appeal.
8 Wilkerson v. Wheeler, 772 F.3d 834, 839 (9th Cir. 2014) (citing Baxter v. Sullivan, 923 F.2d 1391,
9 1394 (9th Cir. 1991)).

10
11 IT IS SO ORDERED.

12 Dated: **October 28, 2021**


UNITED STATES MAGISTRATE JUDGE